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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

TR.C.M.P.No.835 of 2019  
and  
C.M.P.No.22996 of 2019

V.Monica

... Petitioner/Respondent

-vs-

P.Ram Ranveer

... Respondent/Petitioner

PRAYER: Petition is filed under Section 24 of Code of Civil Procedure to withdraw H.M.O.P.No.394 of 2019, pending on the file of the Subordinate Judge of Tambaram and transfer the same to the file of the Family Court of Krishnagiri.

For Petitioner : Mr.V.Nicholas

For Respondent : Mr.C.S.Dhanasekaran

ORDER

The present petition has been filed to transfer the case in H.M.O.P.No.394 of 2019, pending on the file of the Subordinate Court, Tambaram to the file of Family Court, Krishnagiri.

2. It is the case of the petitioner that her marriage with the respondent took place on 17.04.2017 and out of their wedlock, a male child, aged about 18 months, was born. It is further stated that she had lodged a Domestic Violence case in D.V.No.71 of 2019 before the Additional Mahila Court at Krishnagiri against the respondent and his family members.

2.1. It is also stated by the petitioner that she is unemployed, thereby totally depending upon her parents for her livelihood and she finds it difficult to attend the proceedings in Tambaram on every hearing in respect of H.M.O.P.No.394 of 2019. Therefore, it is prayed that much hardship would be caused to the petitioner in the event of non-transfer of the case to the Family Court, Krishnagiri.



2.2. It is submitted by the petitioner that pursuant to the introduction of sub-section (iii-a) to Section 19 of the Hindu Marriage Act, 1955, the divorce petition filed by the respondent herein may be transferred to the Family Court, Krishnagiri where the petitioner/wife is residing. The sub-section (iii-a), which was inserted by Act 50 of 2003 came into force with effect from 23.12.2003 and the same is extracted below for ready reference:

"19. Court to which petition shall be presented -  
Every petition under this Act shall be presented to the district Court within the local limits of whose ordinary original civil jurisdiction -

(i) & (ii) .....

(iii-a) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or....."

3. On the contrary, the respondent has filed a counter, stating that the petitioner / wife is not interested in living with him in the matrimonial home and for no reason, a Domestic Violence case has been filed against him and his family members as a counter blast to the divorce petition filed by him. It is contended that since he is working in a sensitive job, he is not in a position to dance according to the whims and fancies of the petitioner and there is no necessity to transfer the case to Krishnagiri. Hence, it is prayed that the petition is liable to be dismissed.

4. In reply to the above, the petitioner has strongly relied upon a judgment of the Hon'ble Supreme Court in the case of Sumita Singh vs. Kumar Sanjay and another, reported in (2001) 10 SCC 41, wherein it was held that convenience of the wife must be looked at while considering the transfer petition. Yet another judgment of the Hon'ble Supreme Court in Arti Rani @ Pinki Devi and another vs. Dharmendra Kumar Gupta, reported in (2008) 9 SCC 353, was also relied upon in support of her plea to transfer the case to Krishnagiri.

5. Heard the learned counsel on either side and perused the material documents available on record.

6. It is seen that the petitioner has initiated a domestic violence case in D.V.No.71 of 2019 before the Additional Mahila Court at Krishnagiri and the divorce petition instituted by the respondent / husband in H.M.O.P.No.394 of 2019 is pending before the Sub-Court, Tambaram. The in-laws against whom domestic violence had been alleged have approached this Court in CrI.O.P.No.28458 of 2019 and also obtained stay of the



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proceedings in D.V. Case and their personal appearance before the Additional Mahila Court at Krishnagiri also got dispensed with. The judgments referred to by the petitioner may not be applicable to the case on hand, as in Sumita Singh vs. Kumar Sanjay and another (cited supra), the wife therein had to travel 1100kms from Delhi to Bhojpur in order to defend the matrimonial proceedings and similarly, in Arti Rani @ Pinki Devi and another vs. Dharmendra Kumar Gupta (cited supra), the wife therein was forced to travel along with her male child from one State to another and considering those circumstances, the Apex Court had granted the relief to the wife as prayed for in those cases and such is not the situation in the present case.

7. In the present case, the transfer is sought for from Sub Court, Tambaram to the Family Court, Krishnagiri. It is pertinent to mention here that the presence of the parties is not necessary in a case tried by a Sub Court, whereas their appearance is absolutely mandatory before the Family Court, as Advocates are prohibited to appear before the Family Judge, unless or otherwise consent is taken from other side. In case the petition is transferred to the Family Court, Krishnagiri, it will certainly cause inconvenience not only to the husband, who is working as Pilot, but also to the petitioner / wife, as she has to necessarily appear before the Family Court, Krishnagiri in-person along with her child for each and every hearing, as representation through an Advocate is not permissible in law, whereas before the Sub-Court, Tambaram, the parties can give instructions to their Advocates to represent the case and their interest will be safeguarded, protected and taken care of by the respective counsel.

8. The amended provision to Section 19, referred to supra is not applicable to the facts of the present case on account of the reason that the wife is not the petitioner before the Family Court. Of course, it is true that there is no bar for the wife to seek transfer of a case from one Court to another, the reason for such transfer must be germane, which is absent in the case on hand.

9. Taking note of the above factual aspect and in the interest of the parties, especially the child, this Court is not inclined to transfer the case to the Family Court, Krishnagiri. Accordingly, the present Transfer Petition is dismissed. The Subordinate Court, Tambaram is directed to take up the case in H.M.O.P.No.394 of 2019 and proceed with the same on day to-day basis, without adjourning the matter beyond thirty working days at any point of time and bring the issue to a logical end as



expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

To:

1.The Subordinate Judge,  
Tambaram.

2.The Judge,  
Family Court, Krishnagiri.

**+1 cc to M/s.V.Nicholas,Advocate Sr.No.102462 (07/01/2020)**

**+1 cc to M/s.C.S.Dhanasekaran,Advocate Sr.No.102490 (07/01/2020)**

AKM/06.01.2020/4P-5C /

TR.C.M.P.No.835 of 2019